

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 19 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

PETER JEFFERSON,

Plaintiff - Appellant,

v.

JOHN TUTEUR, Assessor of Napa
County,

Defendant - Appellee.

No. 06-15406

D.C. No. CV-04-03419-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted December 5, 2007**
San Francisco, California

Before: FARRIS, BEEZER, and THOMAS, Circuit Judges.

Peter Jefferson appeals the district court's order granting summary judgment in favor of John Tuteur. We review de novo, *Qwest Commc'ns., Inc. v. City of*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Berkeley, 433 F.3d 1253, 1256 (9th Cir. 2006), and affirm. The parties are familiar with the facts and we do not repeat them here.

Jefferson alleges that Tuteur, the Napa County assessor, deprived Jefferson of property by failing to issue a notice of reassessment of his property. A protected property interest is present when an individual has a reasonable expectation of entitlement deriving from “existing rules or understandings that stem from an independent source such as state law.” *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). Jefferson’s property has been properly reassessed and he has received tax refunds based upon that reassessment. Jefferson was awarded attorney’s fees based upon Tuteur’s earlier failure to properly carry out the Napa County Superior Court’s order. Jefferson received actual notice of the reassessment and successfully applied for a reduction in the reassessed property’s valuation. Jefferson fails to show that he has been deprived of any constitutionally cognizable property interest.

Jefferson alleges that Tuteur retaliated against him for exercising his right to petition for redress of grievances. Deliberate retaliation by state actors against an individual’s exercise of the right to petition is actionable under 42 U.S.C. section 1983. *Soranno’s Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314 (9th Cir. 1989). There is no evidence in the record that retaliation was a substantial or motivating

factor in Tuteur's failure to issue the notice of reassessment. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). Even if Tuteur's actions were motivated by retaliation, Jefferson was not actually deprived of any constitutional rights. He successfully petitioned the Board for a new valuation of his property. Without an actual deprivation of a constitutional right, Jefferson's section 1983 claim for retaliation fails. *Soranno's Gasco, Inc.*, 874 F.3d at 1313–14.

The district court did not abuse its discretion in denying Jefferson's motion to amend his complaint because amendment would have been futile. *See Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991).

AFFIRMED.